

## Office of the Secretary of Labor

## § 9.2

### Subpart C—Enforcement

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APPENDIX A TO PART 9—CONTRACT CLAUSE

APPENDIX B TO PART 9—NOTICE TO SERVICE  
CONTRACT EMPLOYEES.

AUTHORITY: 5 U.S.C. 301; section 6, E.O. 13495, 74 FR 6103; Secretary's Order 9-2009, 74 FR 58836.

SOURCE: 76 FR 53752, Aug. 29, 2011, unless otherwise noted.

### Subpart A—General

#### § 9.1 Purpose and scope.

(a) *Purpose.* This part contains the Department of Labor's rules relating to the administration of Executive Order 13495, "Nondisplacement of Qualified Workers Under Service Contracts," and implements the enforcement provisions of the Executive Order. The Executive Order assigns enforcement responsibility for the nondisplacement requirements to the Department. The Executive Order states that the Federal Government's procurement interests in economy and efficiency are served when the successor contractor hires the predecessor's employees. A carry-over workforce minimizes disruption in the delivery of services during a period of transition between contractors and provides the Federal Government the benefit of an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements. Executive Order 13495, therefore, generally requires that successor service contractors performing on Federal contracts offer a right of first refusal to suitable employment (*i.e.*, a job for which the employee is qualified) under the contract to those employees under the predecessor contract whose employ-

ment will be terminated as a result of the award of the successor contract.

(b) *Policy.* Executive Order 13495 establishes a Federal Government policy for service contracts and their solicitations to include a clause that requires the contractor and its subcontractors under a contract that succeeds a contract for performance of the same or similar services at the same location to offer a right of first refusal of employment to those employees (other than managerial and supervisory employees) employed under the predecessor contract whose employment will be terminated as a result of the award of the successor contract in positions for which the employees are qualified. Nothing in Executive Order 13495 or this part shall be construed to permit a contractor or subcontractor to fail to comply with any provision of any other Executive Order, regulation, or law of the United States.

(c) *Scope.* Neither Executive Order 13495 nor this part creates any rights under the Contract Disputes Act or any private right of action. The Executive Order provides that disputes regarding the requirement of the contract clause prescribed by section 5 of the Order, to the extent permitted by law, shall be disposed of only as provided by the Secretary of Labor in regulations issued under the Order. It also provides for this part to favor the resolution of disputes by efficient and informal alternative dispute resolution methods to the extent practicable. The Order does not preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act. Additionally, the Order also provides that it is to be implemented consistent with applicable law and subject to the availability of appropriations.

#### § 9.2 Definitions.

For purposes of this part:

*Administrator* means the Administrator of the Wage and Hour Division and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

*Administrative Review Board* means the Administrative Review Board, U.S. Department of Labor.